NTSB Order No.
EM-119

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 17th day of May, 1985

JAMES S. GRACEY, Commandant, United States Coast Guard

v.

JOHN M. GEESE, Appellant.

Docket ME-106

OPINION AND ORDER

The appellant, by counsel, seeks Board review of a June 8, 1984, decision of the Vice Commandant (Appeal No. 2357) affirming a 6-month suspension of his merchant mariner's license (No. 500833) and document (180-24-2861-D1) that Administrative Law Judge Jerry W. Mitchell imposed on March 11, 1983, following an evidentiary hearing completed on February 14, 1983.[1] The suspension, which the law judge remitted on 12 months' probation, was based on a charge of misconduct on February 7, 1982 shortly after the vessel had departed the Port of Singapore while appellant was serving under the authority of his license and document as second mate aboard the SS PRESIDENT MADISON. On appeal to the Board, the appellant challenges, inter alia, the adequacy of the evidence underlying the findings sustaining the three specifications alleged in support of the charge that due to intoxication he was relieved of his duties by the master and that he twice failed to obey direct orders of the master to go below. for the reasons discussed below we will deny the appeal.

The finding that appellant was relieved from the 0400-0800 bridge watch due to intoxication rests primarily on the direct testimony of the master. He testified that soon after the appellant assumed the watch he was asked to take a fix of the vessel's position. In the course of performing that task, according to the master, appellant stumbled on the coming between the bridge wings and the wheelhouse and utilized the wrong controls on two different radar sets. In addition to stating that appellant's

[1]Copies of the decisions of the Vice Commandant (acting by delegation and the law judge are attached.

movements were uncoordinated, the master testified that he smelled alcohol on appellant's breath and that appellant's eyes were glassy. Based on these observations, the master relieved appellant

of his watch.[2] We think the master's testimony provided sufficient evidentiary support for the first specification. Appellant's contrary view rests on the proposition that the law judge could not accept the master's testimony in the face of the assertedly conflicting evidence on the matter of appellant's alleged intoxication. We disagree.

The law judges acceptance of the master's testimony over appellant's as to what occurred on the bridge, reflects a credibility assessment within his exclusive province as a fact finder who has observed the demeanor of the witnesses.[3] Moreover, appellants' stated belief that the law judge should gave given more weight to the statements of other crew members is based on a somewhat narrow view of the meaning of the term "intoxicated."[4] personal opinions that appellant was not "drunk" when he asked them to render a judgement on the matter. However, they are not, in our view, inconsistent with the evidence, supplied by the master, that the appellant was exhibiting symptoms of alcohol impairment.[5] In other words, the issue is not whether appellant was "drunk" in the sense of being totally unable to function normally, but whether

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[2]The chief engineer on the vessel, who talked to the appellant sometime after he left the bridge, testified that "he smelled like he had been drinking" (Tr. at 68.).

[3]Appellant acknowledged that he had consumed several (2 or 3) alcoholic beverages on shore the previous evening, assertedly before 2300 on February 6. Notwithstanding this acknowledgement, appellant produced a witness, the vessel's second electrician, a Mr. McKillop, who testified that he talked with appellant around 2330 when appellant returned to the ship and had detected no odor of alcohol. The law judge did not find this testimony believable. See Decision and Order at 20.

[4]We note that one of these statements, namely, that of Mr. Berry, the third mate appellant relieved, also arguably conflicted with the master's account in that Mr. Berry stated that he did not notice the odor of alcohol on appellant when he took over the watch. The law judge did not credit this testimony over the master's but relied ont he corroboration of the masters's testimony that was provided by the testimony of the chief engineer.

[5]The master himself disclaimed any belief that appellant was "drunk."

there is a reasonable basis for concluding that appellant was, to some degree, intoxicated.[6] We think the master's testimony, credited by the law judge, on appellant's difficulty in stepping over the coming and in adjusting navigation equipment, on his appearance, and on the odor of alcohol on his breath constituted such a reasonable basis.

We find no merit in appellant's contention that the evidence does not establish that he disobeyed two direct orders to go below. The master testified that after eliciting from the appellant the information that at some point prior to his watch he had been drinking, relieved him of the watch and "requested" that appellant go below. When instead of doing so that appellant remained on the bridge in an apparent effort to convince the master that he was not drunk, the master ordered appellant to go below. At this point the appellant, after assertedly responding "you're crazy," left the bridge. Appellant's failure to leave the bridge immediately following the master's request that he do so forms the basis for the first specification of failure to obey a direct order. We find no error in the Vice Commandant's conclusion that in the context of just having relieved appellant of the watch the master's request constituted a direct order. Appellant was not privileged to remain on the bridge to question or argue the justification for the master's decision.

We also agree that appellant disobeyed the master's second direct order to go below when, having left the bridge after the "request" and the "order", he returned several minutes later and asked the quartermaster at the helm, in the master's presence, whether the quartermaster thought appellant was drunk.[7] We share the Vice Commandant's view that the earlier order forbade a return to the bridge without the master's consent.[8]

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[6]We are not unmindful that the quantum of proof necessary to justify a master's decision to relieve a subordinate on a suspicion of intoxication is considerably less than would be necessary to support a charge of misconduct by the Coast Guard. In this connection we note that the master of this vessel apparently had a policy that no one would be allowed on the bridge who had alcohol on his breath. We are satisfied in this case that the master's decision was based on more than his policy.

[7]This appearance prompted another direct order from the master that appellant go below. On this occasion he appears to have left the bridge more or less immediately.

[8]We note in this connection that the master's disinclination to debate the issue of appellant's intoxication at this pint in the

We have reviewed the remaining contentions in appellant's brief on the issue of the scope of cross-examination permitted by the law Judge and find then without merit.[9]

ACCORDINGLY, IT IS ORDERED THAT:

1. Appellant's appeal is denied, and

2. The decision of the Vice Commandant affirming the law judge's order suspending appellant's seaman license and document is affirmed.

BURNETT, Chairman, GOLDMAN, Vice Chairman and BURSLEY, Member of the Board, concurred in the above opinion and order.

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voyage was not through heavy traffic in the Straits of Singapore.

[9]While the law judge did sustain, apparently on grounds of relevancy, an objection to questions put to the master concerning his testimony in an unrelated case (see Tr. at 47), the appellant, as the Vice Commandant notes in his decision (at 8), "never attempted to explain the relevance of his questions at the hearing, and the relevance is not readily apparent." Moreover counsel for appellant did not pursue the matter by making a proffer as to what he intended to establish by this line of questioning. The argument that appellant's right to cross-examine was improperly cut off is without merit.